IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 3450 of 2005(I)

I.A.NOS.5647/04 & 5648/04 IN OS.224/2002 of PRL.M.C.,ERNAKULAM

.....

PETITIONERS:

---

1. T.A.MATHEW, AGED 50,
   S/O. LATE T.M.ANTONY, BUILDING NO.41/3232,
   CATECHELICAL BUILDING, BANERJEE ROAD, ERNAKULAM.

2. T.A.GEORGE,AGED 45, S/O. LATE T.M.ANTONY
   BUILDING NO.41/3232, CATECHETICAL BUILDING,
   BANERJEE ROAD, ERNAKULAM.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

RESPONDENT:

THE ARCHDIOCESE OF VERAPOLY,
BROADWAY, ERNAKULAM.

BY ADV. SRI.T.P.SAJAN
SRI.L.ALOYSIUS THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 3450/05)

PETITIONERS' EXTS.:

EXT.P1: TRUE COPY OF I.A.NO.5648/04 ON THE FILE OF THE MUNSIFF'S COURT, ERNAKULAM.

EXT.P2: TRUE COPY OF I.A.5647/04 ON THE FILE OF THE MUNSIFF'S COURT, ERNAKULAM.

EXT.P3: TRUE COPY OF THE ORDER DATED 18.9.2004 PASSED BY THE MUNSIFF'S COURT IN I.A.NO.5648/04.

EXT.P4: TRUE COPY OF THE ORDER DATED 18.9.2004 PASSED BY THE MUNSIFF'S COURT IN I.A.5647/04.

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.3450 of 2005

- -

Dated: 27th June, 2007

JUDGMENT

In this Writ Petition under Article 227 of the Constitution the petitioners impugn Ext.P3 order passed by the learned Munsiff dismissing an application seeking review of orders already passed by the learned Munsiff upon applications to implead the legal heirs of the deceased defendant and to set aside the abatement which had set in as regards the legal heirs of the deceased defendant. Also impugned is Ext.P4 order dismissing the separate application for condonation of delay of 113 days which had been occasioned in the matter of filing the review petition.

2. I have heard the submissions of Mr.P.Viswanathan, learned counsel for the petitioners and Mr.L.Aloysius Thomas, learned counsel for the respondent.

3. My attention was drawn by Mr.Viswanathan to the judgment of this court in W.P.C.No.3430 of 2005, a judgment which according to the learned counsel has been rendered by this court on exactly identical facts in respect of another suit between the respondent and the predecessor-in-interest of the writ petitioners.

4. I have gone through the judgment in W.P.C.No.3430 of

2005. Though it is true that orders similar to the order which are impugned in this case have been set aside under that judgment, a careful reading of the judgment will show that the above judgment has been delivered on technical reason and only for the purpose of avoiding procedural lapses.

5. The Supreme Court has in umpteen pronouncements including the one in **Collector, Land Acquisition, Anantnag v. Katiji** (AIR 1987 S.C. 1353) ruled that when interests of substantial justice and those of technicalities can pitted against each other, the court must strive to advance the cause of substantial justice. The facts obtaining in this case ought to be noticed. The suit was for recovery of possession of a building leased out to the father of the petitioners. The petitioners also do not dispute that they come to have any interest on the leasehold only upon demise of their father as legal representatives. The father of the petitioners had filed a written statement raising several contentions. When the father died, the Advocate appearing for the deceased father would file report before the court under Order XXII Rule 10A regarding the demise of his client in discharge of his duty as pleader to communicate the court about the death of the party. It was pursuant to that report that the

respondent filed two applications; one for impleading the present petitioners as additional defendants and another for setting aside the abatement which had set in against them due to not-impleading them within the statutory period of 90 days. On both these applications notice was given to the Advocate who used to appear before the court below for the deceased defendant. He willingly took notice and it is after hearing him also that the court below allowed those applications. In other words, it was with notice to the present petitioners (through their counsel) that the applications filed by the respondent were allowed by the court. Interestingly the petitioners do not disown the counsel through whom only they have filed the present Writ Petition. Under the impugned orders, the court below has refused to condone the delay caused in the matter of filing the Review Petition and consequently refused to review the orders already passed in favour of the respondent.

6. Having gauged the impugned orders by the yardsticks applicable for the exercise of jurisdiction under Article 227 of the Constitution, I am unable to say that the orders warrant correction under the supervisory jurisdiction. No legal prejudice, according to me, has been occasioned to the petitioners. The petitioners will be

permitted to pursue the contentions which have already been raised by their deceased father through his written statement. I do not think that there is much scope for filing any additional written statement by the petitioners. If so advised, they can file additional written statement.

7. Accordingly, the Writ Petition will stand disposed of confirming the impugned orders but directing the court below to receive on file additional statement, if any which the petitioners may file within three weeks from today. If such written statement is filed and any additional issues arise, the court below will formulate those issues and thereafter dispose of the suit in accordance with law.

srd **PIUS C.KURIAKOSE, JUDGE**